

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4751 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 & 2 - Yes

3 to 5 - No

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STATE OF GUJARAT

Versus

DOLATRAM CHHABARIYA HIM SELF &POA HOLDER OF RAMCHANDRA

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Appearance:

MR TH SOMPURA, AGP for Petitioner

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CORAM : MR.JUSTICE M.S.SHAH

Date of Order: 30/07/98

ORAL JUDGMENT

This petition under Article 227 of the Constitution challenges the judgment and order dated 3.1.1992 passed by the Gujarat Revenue Tribunal in revision application No. TEN.B.S. No. 177 of 1987 under the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as "the Act").

2. Although there is delay in filing this petition, the same is explained in the affidavit dated 13.7.1998 of

Mr AS Gamit, Under Secretary to the Government of Gujarat in the Revenue Department. In view of the explanation offered therein, the delay is condoned.

3. On merits, the Mamlatdar found that the holding of the respondents was 259 Acres on the relevant date i.e. 1.4.1976. The Mamlatdar declared 25 Acres and 23-1/2 gunthas as excess land. The Deputy Collector, however, declared 30 Acres and 1 Gunthas as excess land. The Tribunal has, however, given the following findings of fact :-

"On 1.4.1976 the respondents herein are five adult members. Their family also has four major sons i.e. the sons of the applicants and three minor sons"

The Tribunal, therefore, has computed the following units as permissible under the Act :-

5 Units - for the five respondents herein  
(5 members)

4 Units - for the four major sons as on  
1.4.1976 of the respondents.

3/5th unit - as the number of family members  
exceeds 5.

In view of the above computation, the Tribunal found that the respondents were entitled to hold 9 and 3/5th units. Since one permissible unit is equal to 36 Acres, their permissible holding is 345 Acres. However, their total holding was 259 Acres and, therefore, the Tribunal held that there was no excess land. It is the aforesaid judgment and order of the Tribunal which is challenged in the present petition.

4. Mr Sompura, learned AGP appearing for the petitioner-State of Gujarat vehemently urged that the five respondents herein were members of a joint Hindu family and, therefore, the Deputy Collector had rightly granted one unit for the family and 4 units for the four major sons of the respondents under Section 6(3C) of the Act. Even if additional 3/5th of unit could be given on account of the minor sons in the family, the respondents would not be entitled to hold more than 5 and 3/5th units and, therefore, the Tribunal ought not to have interfered with the order of the Deputy Collector.

5. As regards the claim of the respondents that the five respondents i.e. 5 brothers were entitled to hold 5

separate units, the same was rejected by the Deputy Collector on the ground that such a claim was inconsistent with the provisions of the Act. Mr Sompura's contention is that the Deputy Collector had rightly taken such a view because a joint Hindu family is also a family as defined by Section 2(21) of the Act and that, therefore, the family of the five brothers was entitled to only one unit.

6. The order of the Deputy Collector does not clearly show as to on what basis he gave the finding that five members constituted a joint Hindu family, but this Court would proceed on the footing that the five brothers carrying on agricultural operations in a rural area were residing together as a joint Hindu family. The question is whether inspite of the five brothers being major on the appointed date, they were disentitled from getting separate units.

7. To decide this question, the relevant provisions of Section 6 are required to be noted.

"6. Ceiling on holding land - (1)

Notwithstanding anything contained in any law for the time being in force or in any agreement, usage or decree or order of a Court, with effect from the appointed day no person shall, subject to the provisions of sub-section (2), (3), (3A) and (3B) be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area.

(2) Where an individual, who holds land, is a member of a family, not being a joint family which consists of the individual and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, irrespective of whether the family also includes any major son and land is also separately held by such individual's spouse or minor children, then the land held by the individual and the said members of the individual's family excluding major sons, if any shall be grouped together for the purposes of this Act and the provisions of this Act shall apply to the total land so grouped together as if such land had been held by one person.

(3) ....

(3B) Where a family or a joint family consist

of more than five members comprising a person and other members belonging to all or any of any of the following categories, namely :-

- (i) minor son,
- (ii) Wide of a pre-deceased son,
- (iii) minor son or unmarried daughter of a pre-deceased son, where his or her month is dead,

such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area; and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area :

Provided that if any land is held separately also by any member of such family, the land so held separately by such member shall be grouped together with the land to such family for the purpose of determining the total holding of

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xxx xxx xxx xxx xxx xxx

(3C) Where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of sub-section (1)."

8. Now, if Mr Sompura's arguments were to be accepted, it would mean that a joint family having five brothers having attained majority would get only one unit, but if their father was alive, then they would get 6 units i.e. one for the father and 5 for the major sons under Section 6(3C) of the Act; or if the five brothers had already separated, they would have been entitled to get 5 separate units in view of the provisions of sub-section (2) of Section 6 of the Act. The argument is fallacious because sub-section (3C) of Section 6 clearly provides that where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of sub-section (1). Could it have been the intention of the legislature (which has provided that when the father is alive, all five major brothers would get 5 separate units over and above the unit of the father) that a joint family having five major

brothers would get only one unit merely because their father is not alive ? The provisions of sub-section (3C) of section 6 of the Act are required to be harmoniously read with the provisions of sub-sections (2) and (3B) of Section 6. It is true that the joint family is recognized as a person and if the joint family were to have four members out of whom only one were a major on the appointed date, then the family would be entitled to hold only one unit, but where all the five members are major, they cannot be denied the benefit of the provisions of sub-section (3C) of Section 6 on the ground that the father is not alive. Read in this context and more particularly reading the provisions of Section 6 of the Act in the the context of the Indian cultural ethos, this Court would be loath to interpret the provisions of sub-section (3C) of Section 6 of the statute in a manner which would militate against the Indian tradition of a joint family, and that too in agricultural families in respect of rural areas.

9. The view that this Court is taking is also fortified by the language of Section 6(3C) which specifically provides that where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of sub-section (1). The agricultural lands are jointly inherited by the sons from their ancestors, the father being the nearest ancestor. Hence, the right of a major individual to cultivate the land as a member of the joint family is not to be denied on the ground that his father has expired and, therefore, he is not a son but merely a member of the joint family. Such a view is not warranted.

10. The Tribunal rightly held that all the five respondents herein being major members of the family on the appointed date were entitled to hold five separate units. Similarly, four major sons of the respondent-brothers were admittedly entitled to hold additional four units under Section 6(3C) of the Act. In this view of the matter, the respondents were certainly entitled to hold 9 units. Since one unit is equal to 36 Acres, the respondents would be entitled to hold 324 Acres, but the holding of the respondents on 1.4.1976 was only 259 Acres and, therefore, the Tribunal was justified in holding that the respondents were not holding any excess land.

11. One aspect is, however, required to be clarified that since this Court is taking the view that the members of a joint family who are brothers and whose father is

not alive are entitled to hold separate units of land, for the purpose of claiming the benefit of the provisions of sub-section (3B) of Section 6, such benefit can be claimed only if the number of family members exceeds five in the family of that particular brother. In the instant case, all the respondents herein having been held to be entitled to hold five separate units, and there being nothing on record to show that any particular brother was having more than five members in his family, none of the brothers would be entitled to get the benefit of sub-section (3B) of Section 6 of the Act. The Tribunal was, therefore, not justified in granting 3/5th of the unit on the ground that there were three minor sons in the family. The three minor sons were of the different brothers. Since each of them is entitled to hold a separate unit, they cannot claim the benefit of section (3B) if the number of members of the family of an individual brother does not exceed five.

However, this discussion will not have any impact in the instant case, because even while ignoring 3/5th of a unit, the respondents would still be entitled to hold 9 units of 36 Acres each i.e. 324 Acres. Their holding being 259 Acres, the holding of the respondents was not in excess of the ceiling limit prescribed under the Act.

12. The petition is, therefore, summarily dismissed.

Sd/-

July 31, 1998 (M.S. Shah, J.)